



N 6570-01P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

3046-AA58

Waivers of Rights and Claims in Settlement of a Charge or Lawsuit under the Age
Discrimination in Employment Act; Corrections

AGENCY: Equal Employment Opportunity Commission

ACTION: Correcting Amendments.

SUMMARY: The EEOC is correcting a cross-reference in its regulation concerning the requirements for a valid waiver of an individual's right to file a lawsuit under the Older Workers Benefit Protection Act (OWBPA) amendments to the Age Discrimination in Employment Act (ADEA). This is a technical correction.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

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or (202) 663-4494 (TTY), or the Publications Information Center at 1-800-669-3362 (toll free).

SUPPLEMENTARY INFORMATION:

Background

In the Older Workers Benefit Protection Act of 1990 (OWBPA), Congress established requirements for the knowing and voluntary release of claims under the Age Discrimination in Employment Act (ADEA).¹ The OWBPA set basic requirements for all waivers of ADEA rights, and it imposed extra requirements when employers sought such waivers in connection with an exit incentive or group termination program. To implement the OWBPA, the EEOC issued a final negotiated rule at 29 CFR 1625.22 in 1998.²

Need for Correction

The EEOC now corrects a cross-reference in 29 CFR 1625.22(g)(3), the provision that states the basic requirements for waiving ADEA rights when settling an ADEA charge or lawsuit. Where subsection (g)(3) should cross reference the rule's "knowing and voluntary" requirements applicable to all ADEA waivers, it instead references the rule's additional requirements for *group termination programs*. Therefore, the EEOC now replaces the incorrect language in 29 CFR 1625.22(g)(3) ("set out in paragraph (f) of this section"), with language referencing the rule's general waiver requirements ("set out in paragraphs (b), (c), and (d) of this section.").

¹ Pub. L. 101-433, 104 Stat. 978 (codified at 29 U.S.C. 626(f)).

² 63 FR 30624, 30631 (June 5, 1998) (EEOC Final Rule for Waiver of Rights and Claims under the ADEA).

Changes to Authority Citation

This rule also contains several changes to the existing authority citation for 29 CFR Part 1625. Some of these changes update existing citations to comply with Federal Register formatting conventions. Others streamline and consolidate several references to the Age Discrimination in Employment Act. The revisions also add Executive Order 12067 due to its discussion of the EEOC's leadership role in age discrimination in employment and the EEOC's responsibilities with respect to federal regulations concerning employment discrimination.

Retrospective Regulatory Review

Although the EEOC's rulemaking on waivers of rights and claims under the ADEA is not currently a priority for regulatory review, the Commission is taking this action, consistent with the EEOC Plan for Retrospective Analysis of Existing Rules,³ based on stakeholder input and efforts to enhance clarity in the EEOC's regulations.⁴

Regulatory Procedures

The Commission finds that public notice-and-comment on this rule is unnecessary, because the revision makes no substantive change; it merely corrects an internal cross-referencing error. The rule is therefore exempt from the notice-and-comment requirements of 5 U.S.C. 553(b) under 5 U.S.C. 553(b)(B). This technical correction also is not "significant" for purposes of Executive Order 12866, as reaffirmed

³ A copy of the EEOC's Final Plan for Retrospective Analysis of Existing Regulations is available at http://www.eeoc.gov/laws/regulations/retro_review_plan_final.cfm (last visited Oct. 5, 2012).

⁴ This error was brought to the EEOC's attention by attorneys inquiring about the requirements for settling a charge of age discrimination.

by E.O. 13563, and therefore is not subject to review by Office of Management and Budget.

Regulatory Analysis

Since this technical correction contains no substantive changes to the law, EEOC certifies that it contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35), it requires no formal cost-benefit analysis pursuant to E.O. 12866, it creates no significant impact on small business entities subject to review under the Regulatory Flexibility Act, and it imposes no new economic burden requiring further analysis under the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This correction is defined as a rule under the Congressional Review Act, but not as a major rule. As a result, it was provided to Congress and the General Accountability Office pursuant to the requirements of 5 U.S.C. 801 as interpreted by Office of Management and Budget Memorandum M-99-13.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee benefit plans, Equal employment opportunity, and Retirement.

For the reasons stated in the preamble, the Equal Employment Opportunity Commission amends 29 CFR Part 1625 as follows:

PART 1625 –AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for 29 CFR Part 1625 is revised to read as follows:

Authority: 29 U.S.C. 621-634; 5 U.S.C. 301; Pub. L. 99-502, 100 Stat. 3342; Secretary's Order No. 10-68; Secretary's Order No. 11-68; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807; Executive Order 12067, 43 FR 28967.

2. Revise § 1625.22(g)(3) to read as follows:

§1625.22 Waivers of rights and claims under the ADEA.

* * * * *

(g) * * *

(3) The standards set out in paragraphs (b), (c), and (d) of this section for complying with the provisions of section 7(f)(1)(A)-(E) of the ADEA also will apply for purposes of complying with the provisions of section 7(f)(2)(A) of the ADEA.

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Dated: March 5, 2014

For the Commission

Jacqueline A. Berrien

Chair

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